

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. 8:13CR105
)
vs.) **SENTENCING STATEMENT**
)
TIMOTHY DEFOGGI,)
)
Defendant.)

Comes Now Defendant, Timothy DeFoggi, by and through undersigned counsel, and provided the following sentencing statement of position pursuant to paragraph 6 of the Second Amended Order on Sentencing Schedule:

- 1) Defendant denies having the following email addresses and passwords:
 - a. fuckchrist@tormail.org
 - b. Notaboo_69@yahoo.com
 - c. genericaddr@yahoo.com
 - d. luvemskinny@yahoo.com
 - e. jsnparsons@yahoo.com
 - f. Fuckchrist (username)
 - g. PTasseater (Display name)
 - h. PTasseater69 (Display name)
 - i. Myspace.com 1399710447
- 2) Defendant denies all aliases listed except for toonaBug (Registered Owner and User of Microsoft Window 7 Home Premium Operating System).
- 3) Paragraph 2 – Defendant denies using the username fuckchrist and display name PTasseater.
- 4) Paragraphs 26-47; 50-72; and 74-83 – Defendant denies the allegations contained in these paragraphs and stands on his pleas of not guilty. In addition, Defendant notes many of the items found in his residence to include items identified in paragraphs 70-72, and 78 belonged to or were used by his son, Chris.
- 5) Paragraph 94 – Defendant denies utilizing the 2GB PNY thumb drive.
- 6) Paragraph 154 – Defendant asserts the following departures are warranted from the Guideline calculations:
 - a. U.S.S.G. §5H1.1 – Age: Defendant is 56, which lowers the risk of recidivism.
 - b. U.S.S.G. 5H1.2 and 5H1.5 – Education and Vocational Skills; Employment: Defendant has a stellar history of using his education and vocational skills to the longstanding benefit of his country.

- c. U.S.S.G §5H1.6 – Family Ties and Responsibilities: Defendant is fortunate to have an extraordinarily supportive sister, brother-in-law, and significant other who have and will continue to stand by his side throughout his legal process.
- d. U.S.S.G. §5h1.11 – Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works: Defendant has an exemplary record of military service; service to the United States Government; and service to the community.

- 7) Paragraph 155 – Defendant states that a variance is warranted based on an analysis and deconstruction of the child pornography guidelines which lack empirical data to support them; and for the departure factors listed above.
- 8) In addition, the mandatory minimums imposed on Counts I, II, and III are in violation of Defendant's right against cruel and unusual punishment prohibited by the Eighth Amendment to the United States Constitution. Defendant thus respectfully requests that the Court impose a sentence below the mandatory minimums set forth by statute.

TIMOTHY DEFOGGI, Defendant

By: s/Stuart J. Dornan
STUART J. DORNAN, #A0011658
Dornan, Lustgarten & Troia, PC, LLC
1403 Farnam Street, Suite 232
Omaha, Nebraska 68102
Tel: 402.884.7044
Fax: 402.881.7045
stu@dltlawyers.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2014, I electronically filed the foregoing document with the Clerk of the District Court using the CM/ECF system which sent notification of such filing to the following:

Michael P. Norris, Assistant United States Attorney

Sandra Foster, United States Probation Officer

and I hereby certify that I have electronically served (via email) a copy of the foregoing document to which this certificate is attached to the parties or attorney formerly of record, shown below:

John S. Berry, Jr.

By: s/Stuart J. Dornan
STUART J. DORNAN, #A0011658
Attorney for Defendant